

United States Senate
WASHINGTON, DC 20510

July 10, 2013

President Barack Obama
The White House
Washington, D.C. 20500

Dear Mr. President:

We write to urge you to use your Presidential authority to end the unnecessary force-feedings of detainees at the Guantanamo Bay detention facility.

Earlier this week, U.S. District Court for the District of Columbia Judge Gladys Kessler also expressed concern about the force-feeding of Guantanamo Bay detainees. The Court denied detainee Jihad Dhiab's motion for a preliminary injunction to stop force-feeding due to lack of jurisdiction, but in her order, Judge Kessler noted that Dhiab has set out in great detail in his court filings "what appears to be a consensus that force-feeding of prisoners violates Article 7 of the International Covenant on Civil and Political Rights (ICCPR) which prohibits torture or cruel, inhumane, and degrading treatment." The United States has ratified the ICCPR and is obligated to comply with its provisions. Judge Kessler also wrote, "it is perfectly clear from the statements of detainees, as well as the statements from the [medical] organizations just cited, that *force-feeding is a painful, humiliating, and degrading process.*" (emphasis added).

The judge concluded by correctly pointing out that you, as Commander in Chief, have the authority to intercede on behalf of Dhiab, and other similarly-situated detainees at Guantanamo. The court wrote: "Article II, Section 2 of the Constitution provides that '[t]he President shall be the Commander in Chief of the Army and Navy of the United States. . . .' It would seem to follow, therefore, that the President of the United States, as Commander-in-Chief, has the authority — and power — to directly address the issue of force-feeding of the detainees at Guantanamo Bay."

Furthermore, on May 23, 2013, in your national security speech at the National Defense University you raised the issue of force-feeding and asked "*Is this who we are? Is that something our Founders foresaw? Is that the America we want to leave our*

children?" (emphasis added). We don't believe it is. And we agree with your comment in the speech that "[o]ur sense of justice is stronger than that."

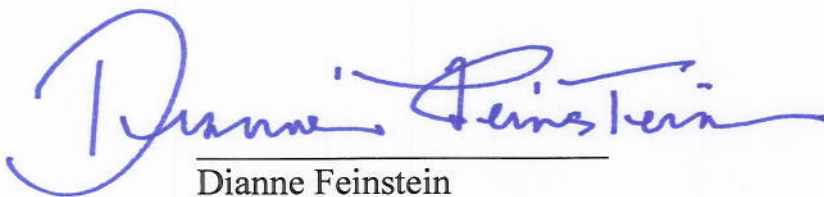
We therefore encourage you to direct the Department of Defense to stop conducting such large-scale force-feedings and, where force-feeding is medically necessary to save a detainee's life, to observe the protections required at U.S. Bureau of Prisons facilities. It is our understanding that the U.S. federal prison guidelines for force-feedings include several safeguards and oversight mechanisms that are not in place at Guantanamo Bay.


Attached please find Senator Feinstein's June 19th letter to Secretary Hagel, which was sent after Senator Feinstein traveled to Guantanamo with your chief of staff and Senator McCain. There has been no response to this letter.

U.S. military personnel serving at Guantanamo are doing an excellent job under difficult circumstances, but they are being asked to carry out an unsustainable policy of indefinite detention because Congress and the Executive Branch have failed to resolve this problem. The growing problem of hunger strikes is due to the fact that many detainees have remained in legal limbo for more than a decade and have given up hope. This should be alarming to all of us, and it is imperative that the Administration outline a formal process to permanently close the Guantanamo facility as soon as possible. We look forward to continue working with you to achieve that end.

Thank you for your attention to this important matter.

Sincerely,


Dianne Feinstein


Richard J. Durbin

Enclosure

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June 19, 2013

The Honorable Chuck Hagel
Secretary of Defense
Department of Defense
Washington, D.C. 20301

Dear Mr. Secretary:

I have given a great deal of thought since visiting the detention facility at Guantanamo Bay on June 7, 2013, about the continued hunger strikes and force-feeding occurring there. I write to express to you my concerns and opposition to the force-feeding of detainees, not for reasons of medical necessity but as a matter of policy that stands in conflict with international norms.

Before detailing these concerns, let me state again my appreciation for all the efforts of your Department in supporting this very informative and productive trip. Senator John McCain, White House Chief of Staff, Denis McDonough, and I were all very impressed by the command at Joint Task Force Guantanamo by Admiral Smith, and by the representatives of all the services and civilians working at Guantanamo under very challenging and difficult conditions. Their professionalism and dedication were clearly apparent, and in no way does my disagreement with the force-feeding policy reflect on their work.

During our visit, more than 60 percent of the 166 detainees held at Guantanamo Bay were categorized by the Department of Defense as "hunger strikers," with more than 40 of them being force-fed. Four detainees were in the facility's hospital for problems related to their feeding or hunger strike. During our visit to the prison, we were briefed on the Department of Defense policies regarding force-feedings and I remain concerned that these policies are out of step with international norms, medical ethics and practices of the U.S. Bureau of Prisons.

The International Committee of the Red Cross (ICRC) and the World Medical Association (WMA), as well as numerous international organizations

(including the Office of the UN High Commissioner for Human Rights, the Inter-American Commission on Human Rights, the United Nations Working Group on Arbitrary Detention, and three UN Special Rapporteurs) have all criticized or opposed the force-feedings of detainees.

The WMA recently stated that “[f]orcible feeding is never ethically acceptable,” and “that physicians should never be used to break hunger strikes through acts such as force-feeding.” The American Medical Association has supported the WMA’s position on this matter. On May 13, 2013, several human rights and anti-torture organizations—citing the positions of the ICRC and WMA—wrote that the force-feeding of detainees at the Guantanamo Bay facility violates Common Article 3 of the Geneva Conventions prohibiting cruel, humiliating and degrading treatment. Moreover, a recently published bipartisan Task Force on Detainee Treatment—led by former Congressman Asa Hutchinson and former Ambassador Jim Jones—found that the Department of Defense’s force-feeding practices were “contrary to established medical and professional ethical standards” and called on the United States to adopt standards of care, policies, and procedures in keeping with the guidelines developed by the WMA, “including affirmation that force-feeding is prohibited.”

In addition to the allegation that the Department of Defense’s force-feeding practices are out of sync with international norms, they also appear to deviate significantly from U.S. Bureau of Prison practices. Based on a review by Intelligence Committee staff, the significant differences between force-feedings at Guantanamo Bay and within the U.S. Bureau of Prisons relate to the manner in which detainees are force-fed, how often detainees are force-fed, and the safeguards and oversight in place during force-feedings.

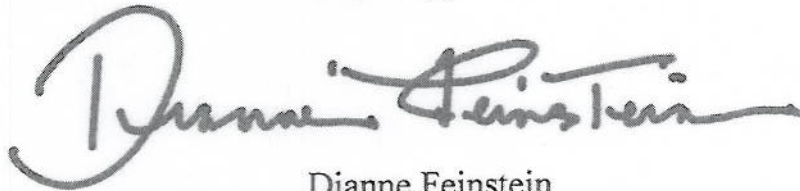
Within the Bureau of Prisons, force-feeding is exceedingly rare. The Intelligence Committee staff has been told that no inmate within the Bureau of Prisons has been force-fed in more than six months. When force-feedings do occur within the Bureau of Prisons, we have been told that nearly 95% of the time they are conducted with a fully compliant inmate requiring no restraints. At Guantanamo Bay, on the other hand, all detainees being force-fed—regardless of their level of cooperation—are placed in chairs where they are forcibly restrained. The visual impression is one of restraint: of arms, legs, and body. Further, at Guantanamo Bay, detainees are fed twice a day in this manner, potentially over a substantial period of time. This also is inconsistent with the practice of the U.S. Bureau of Prisons.

Additionally, the U.S. federal prison guidelines for force-feedings include several safeguards and oversight mechanisms that are not in place at Guantanamo Bay. These guidelines require the warden to notify a sentencing judge of the involuntary feeding, with background and an explanation of the reasons for involuntary feeding. Further, the Bureau of Prisons requires an individualized assessment of an inmate's situation to guide how force-feedings are administered, a practice that I found largely absent at Guantanamo Bay. Finally, all force-feedings must be videotaped within the Bureau of Prisons.

Hunger strikes are a long known form of non-violent protest aimed at bringing attention to a cause, rather than an attempt of suicide. I believe that the current approach raises very important ethical questions and complicates the difficult situation regarding the continued indefinite detention at Guantanamo. I urge you to reevaluate the force-feeding policies at Guantanamo Bay and to put in place the most humane policies possible.

I very much appreciate your attention to this important matter.

Sincerely,

A handwritten signature in dark ink, reading "Dianne Feinstein". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dianne Feinstein
Chairman